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In the Supreme Court of the United States

OCTOBER TERM, 1978

FLORIDA DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES, PETITIONER

v.

JOSEPH A. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the district court (Pet. App. 33-74) is reported at 449 F. Supp. 274. The opinion of the court of appeals (Pet. App. 31-32) is reported at 585 F. 2d 150.

JURISDICTION

The judgment of the court of appeals was entered on November 27, 1978. The petition for a writ of certiorari was filed on February 23, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Rehabilitation Act of 1973 violates the Tenth Amendment by conditioning the granting of federal

vocational rehabilitation funds to a state on the state's administering its vocational rehabilitation program in compliance with the requirements of the Act.

2. Whether the Secretary of Health, Education, and Welfare has the authority under the Intergovernmental Cooperation Act to waive the "organizational unit" requirement of the Rehabilitation Act of 1973.

STATEMENT

1. The Rehabilitation Act of 1973, 29 U.S.C. 720 *et seq.*, authorizes grants of federal funds to the states to assist programs for the handicapped. State participation in the grant program is voluntary, but participating states must submit an annual plan for vocational rehabilitation services that satisfies the conditions set forth in Section 101 of the Act, 29 U.S.C. 721. Among these is a requirement that the state designate a single agency to administer its vocational rehabilitation plan. 29 U.S.C. 721(a)(1)(A).

The designated state agency must be one of three general types: it may be the agency primarily concerned with rehabilitation of the handicapped in the state; or it may be the agency that supervises or administers education or vocational education in the state; or it may be an agency that includes at least two other major organizational units, each of which administers a major public education, health, welfare, or labor program in the state. 29 U.S.C. 721(a)(1)(B). If the state agency is of the second or third type, it must include an organizational unit, with a full-time director, that is responsible for the agency's vocational rehabilitation program. 29 U.S.C. 721(a)(2)(A). This is known as the "organizational unit" requirement. The Act requires the Secretary to disapprove any plan that does not fulfill the statutory conditions. Before disapproving any state plan, the Secretary must notify the state of his intent to disapprove the plan, and he must afford the state an opportunity for hearing on the matter. 29 U.S.C. 721(b).

2. In early 1976 Florida submitted its proposed vocational rehabilitation plan for that year to the Rehabilitation Services Administration.[1] The plan reflected the 1975 reorganization of the State's Department of Health and Rehabilitation Services, the state agency designated by the Florida legislature to provide vocational rehabilitation services. The Commissioner of the Rehabilitation Services Administration concluded that the Florida plan did not satisfy the requirements of the Rehabilitation Act, and he notified the Governor of Florida that he intended to disapprove the plan. Among the deficiencies identified by the Commissioner were (1) the lack of authority in the vocational rehabilitation program director to direct the program, as required by 29 U.S.C. 721(a)(2) and the implementing regulations at 45 C.F.R. 1361.6 to 1361.8, and (2) the absence of clear lines of authority in the vocational rehabilitation units, as required by 45 C.F.R. 1361.7(a)(2) (Pet. App. 37-38).

After a hearing on the proposed plan, the hearing officer found that the plan did not provide for a full-time director of the organizational unit responsible for vocational rehabilitation in Florida. He further found that the director lacked adequate authority and responsibility at the district or field level in the various areas. In addition, he found that the plan failed to provide for clear lines of authority over vocational rehabilitation. The hearing officer therefore concluded that the plan did not meet the "organizational unit" requirement of the Rehabilitation Act. After considering Florida's exceptions, the Commissioner adopted the findings and decision of the hearing officer, and he disapproved the Florida Plan (Pet. App. 38-41).

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[1]The Secretary's functions have been delegated to the Commissioner of the Rehabilitation Services Administration. 40 Fed. Reg. 5809 (1975).

Following the Commissioner's decision, the Governor of Florida asked the Secretary to waive the applicable "organizational unit" requirements. He suggested that the waiver be made under the Intergovernmental Cooperation Act, which allows the head of any federal department to waive any requirement that "a single State agency or multi-member board or commission must be established" in connection with a grant-in-aid program (42 U.S.C. 4214). This waiver is permissible only if the head of the federal agency finds "that the objectives of the Federal statute * * * will not be endangered" (*ibid.*). The Secretary responded that the Intergovernmental Cooperation Act did not authorize him to grant the requested waiver, because the Act speaks only to the waiver of "single state agency" requirements and not to the waiver of requirements such as the "organizational unit" requirement (Pet. App. 41-42).

3. On March 25, 1977, Florida filed this action in the United States District Court for the Northern District of Florida. The State sought review of the Commissioner's determination that Florida's plan did not conform to the requirements of the Rehabilitation Act and a declaratory judgment that the "organizational unit" requirements of the Act could be waived (Pet. App. 42-44). The district court held that the Commissioner correctly concluded that the Florida plan failed to conform to the requirements of the Act. The court also held that the requirements imposed by the Act as conditions of state receipt of federal vocational rehabilitation grants do not violate the Tenth Amendment of the Constitution and that the Secretary properly concluded that he lacks the authority to waive the organizational unit requirement (Pet. App. 33-74). The court of appeals affirmed on the basis of the district court's opinion (Pet. App. 31-32).

ARGUMENT

1. Petitioner argues (Pet. 17-27) that the "organizational unit" requirement of the Rehabilitation Act is an unconstitutional infringement of the powers retained by the States under the Tenth Amendment. The "organizational unit" requirement provides that in order to qualify for federal vocational rehabilitation funds, the state's vocational rehabilitation program must have a full-time director with the authority necessary to administer the program.

Petitioner relies almost exclusively on *National League of Cities* v. *Usery*, 426 U.S. 833 (1976), to support its contention that the conditions imposed on federal grants under the Rehabilitation Act are unconstitutional. That case, however, involved a mandatory requirement imposed on the states under the commerce power, while the Rehabilitation Act, an exercise of the spending power, establishes only a set of conditions that states must satisfy if they wish to receive federal grants for vocational rehabilitation. A state is free to decline the proffered assistance; if it does so, it need not comply with the conditions. In *National League of Cities* the Court "express[ed] no view as to whether different results might obtain" if Congress had sought to achieve the goal of minimum wage regulation through use of the spending power. 426 U.S. at 852 n.17.

The constitutional power of Congress to place conditions on the manner in which federal grants are disbursed has repeatedly been sustained. See, *e.g.*, *King* v. *Smith*, 392 U.S. 309, 333 n.34 (1968); *Ivanhoe Irrigation District* v. *McCracken*, 357 U.S. 275, 295 (1958); *Oklahoma* v. *Civil Service Commission*, 330 U.S. 127, 143 (1947); *Helvering* v. *Davis*, 301 U.S. 619 (1937); *Steward Machine Co.* v. *Davis*, 301 U.S. 548 (1937); *Massachusetts* v. *Mellon*, 262 U.S. 447, 480 (1923). In *North Carolina* v. *Califano*, 445 F. Supp. 532 (E.D.N.C. 1977), aff'd mem., 435 U.S. 962 (1978), this Court affirmed the judgment of a three-judge court that upheld the constitutionality of the National Health Planning and Resources Development Act of 1974, 42 U.S.C. 300k *et*

seq. That statute requires the recipient state to establish a State Health Planning and Development Agency. North Carolina argued that this requirement interfered with the integral operations of state government, particularly because an amendment to the North Carolina Constitution was required in order to comply. This Court found that statutory requirement to be a constitutional exercise of the spending power. In the present case, in which the statute does not require the State to establish a new agency but merely requires that the existing agency meet certain organizational requirements, the burden of the condition imposed by the statute is even less onerous.

The analysis in *National League of Cities* is inapplicable here because of the very different character of the federal action. As this Court has recently observed, governmental power "to encourage actions deemed to be in the public interest is necessarily far broader" than the government's power "to impose its will by force of law." *Maher* v. *Roe*, 432 U.S. 464, 476 (1977). The Rehabilitation Act simply encourages state action that Congress believes worth paying for.[2] It does not command the states; it does not threaten their separate or independent existence. It therefore does not exceed the limitations on Congress' power identified in *National League of Cities*.

Far from being a pervasive interference with a state's authority to structure its programs, the "organizational unit" requirement merely provides that states distributing federal vocational rehabilitation funds must do so through an integral unit headed by a full-time director with adequate administrative authority. For a number of years, Florida's program has been in compliance with the requirement. When the Florida legislature in 1975

[2]In *Buckley* v. *Valeo*, 424 U.S. 1, 57 n.65, 97-104 (1976), this Court drew a parallel distinction, holding that although the government could not forbid a candidate from spending funds, it could use its spending power to induce him not to spend those funds.

undertook a reorganization of its health, social, and rehabilitative services, it was expressly intended that these goals would not conflict with existing federal requirements. See Fla. Stat. Ann. §20.19 (West 1978 Supp.). Indeed, the State has previously maintained that it is in compliance with federal requirements. The requirements of the Act thus cannot fairly be said to work the kind of "deep intrusion into state internal structure and organization" of which petitioner complains (Pet. 24).

2. Petitioner also contends (Pet. 27-29) that the Intergovernmental Cooperation Act permits the Secretary to waive the "organizational unit" requirement of the Rehabilitation Act of 1973. The district court correctly held that both the language of the Intergovernmental Cooperation Act and its legislative history demonstrate that Congress did not intend to permit waiver of the organizational unit requirement of 29 U.S.C. 721)(a)(2) (Pet. App. 47). There is no conflict among the circuits on the construction of the Intergovernmental Cooperation Act, and thus no reason to grant review.

The Intergovernmental Cooperation Act allows only the waiver of a requirement that "a single State agency or multi-member board or commission" administer or supervise a grant-in-aid program (42 U.S.C. 4214). The statute does not reach the "organizational unit" requirement here, which goes beyond a requirement of the kind referred to in the Intergovernmental Cooperation Act. Section 721(a)(1) of the Rehabilitation Act contains a "single state agency" requirement of the type referred to in the Intergovernmental Cooperation Act. That requirement, however, is quite distinct from the organizational unit requirement of Section 721(a)(2). As the district court noted, "Congress was concerned that there be clear lines of authority and responsibility within the state agency over the provision of rehabilitative services, and that

administration of the program be the province of persons concerned almost exclusively with vocational rehabilitation" (Pet. App. 50). This specific statutory concern would be undercut by permitting its waiver in the same fashion as the more general "single state agency" requirement.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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